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*Attorney in pro se and as Counsel for
the Plaintiffs upon approval of Pro
Hac Vice admission*

EVELYN ADAMS, Plaintiff

c/o **PHILIP J. BERG, ESQUIRE**

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*In Pro Se, Pending Mr. Berg's Pro
Hac Vice Admission*

LISA OSTELLA, and GO EXCEL GLOBA, Plaintiffs

c/o **PHILIP J. BERG, ESQUIRE**

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LISA LIBERI, Plaintiff

c/o **PHILIP J. BERG, ESQUIRE**

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**U.S. DISTRICT COURT, NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

LINDA SUE BELCHER, et al,

Defendants.

CIVIL ACTION

Case No. 2:11-cv-00090-J

Honorable Mary Lou Robinson

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT EDGAR
HALE'S MOTION TO DISMISS**

TO THE HONORABLE COURT:

Plaintiffs Philip J. Berg, Esquire, in pro se and as Counsel for the Plaintiffs upon *Pro Hac Vice* admission, and Plaintiffs Evelyn Adams, Lisa Liberi, Lisa Ostella, Go Excel Global and the Law Offices of Philip J. Berg and files the within Response in Opposition to Defendant Edgar Hale's [hereinafter at times "Defendant" or "Hale"] Motion to Dismiss. In support hereof, Plaintiffs avers as follows:

1. Plaintiffs filed suit against Defendant on May 4, 2009 in the U.S. District Court, Eastern District of Pennsylvania, Docket Entry No. ["Dkt. No."] 1.

2. Defendant Edgar Hale on behalf of himself filed an Answer and Motion to Dismiss on May 26, 2009, Dkt No. 25. The Hale's hired counsel who also filed an additional brief in support of Hale's Motion to Dismiss on June 24, 2009. *See* Dkt No. 70.

3. Defendant failed to raise any Affirmative Defenses and failed to raise the issue of protections under the First Amendment of the United States Constitution in his Answer (Affirmative Defense) and/or in his previous Motion to

Dismiss, Dkt No. 25 and therefore, is precluded from doing so now as they are waived; *See* Federal Rules of Civil Procedure [*"Fed. R. Civ. P."*] 12(h).

4. Further, a Defendant in a lawsuit is precluded from bringing additional Motions to Dismiss pursuant to *Fed. R. Civ. P.* 12, raising issues, defenses or objections that were available to the Defendant at the time he filed his original Motion to Dismiss. *See Fed. R. Civ. P.* 12(g)(2). Hale's Motion to Dismiss does **not** fit in any of the exceptions to these rules as outlined in *Fed. R. Civ. P.* 12(g)(2) and therefore, must be Dismissed.

5. Plaintiffs also object to the entry of Defendant Hale's Exhibits "1" through "16" and the six (6) Cd's. Plaintiffs were **not** served with the six (6) CD's and all these Exhibits are hearsay, double hearsay, unauthenticated and under dispute in violation of the Federal Rules of Evidence, [*"Fed. R. Evid."*] 801(c), 805, 901, 902 and 1005 and are therefore, inadmissible, *Fed. R. Evid.* 802.

6. Moreover, Defendant Hale's Exhibits "1" through "16" and his six (6) unknown CD's are irrelevant in violation of *Fed. R. Evid.* 401 and 402 and therefore, inadmissible pursuant to *Fed. R. Evid.* 402.

7. Even if Defendant Edgar Hale's Motion was proper, which it is **not**, false allegations, accusations and reporting of the false information are **not** Free Speech protected by the First Amendment to the United States Constitution. *See*

Beauharnais v. Illinois, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952), (the Court held that libelous speech is not protected by the U.S. Constitution).

8. Plaintiffs Opposition to Defendant Hale's Motion to Dismiss is based upon this Response in Opposition; Plaintiffs Memorandum of Points and Authorities filed herewith; the files and records on file with this Court and any oral argument which may be presented.

WHEREFORE, for the reasons outlined herein and in Plaintiffs Memorandum of Points and Authorities, Plaintiffs respectfully request this Court to Deny Defendant Edgar Hales Motion to Dismiss. Plaintiffs also seek travel expenses in the amount of Two Thousand Five Hundred [\$2,500.00] Dollars for each Plaintiff, for a total amount of Ten Thousand [\$10,000.00] Dollars payable within fourteen [14] days of this Court's Order payable through Philip J. Berg, Esquire, if a Hearing is set and held on Defendants Motion for each of the Plaintiffs forced to fly in and attend any such Hearing.

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Respectfully submitted,

Dated: August 15, 2011

/s/ Philip J. Berg
PHILIP J. BERG, ESQUIRE
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*Attorney in pro se and as Counsel for the
Plaintiffs upon approval of Pro Hac Vice
admission*

Dated: August 15, 2011

/s/ Evelyn Adams
EVELYN ADAMS, Plaintiff
c/o **PHILIP J. BERG, ESQUIRE**
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Dated: August 15, 2011

/s/ Lisa Ostella
LISA OSTELLA, and
GO EXCEL GLOBAL, Plaintiffs
c/o **PHILIP J. BERG, ESQUIRE**
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Dated: August 15, 2011

/s/ Lisa Liberi
LISA LIBERI, Plaintiff
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